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In the
UNITED STATES SUPREME COURT

October Term, 1940

No. 306

TRAVELERS INSURANCE COMPANY, *Petitioner*

VS.

EVELYNN PRICE, *Respondent*

**BRIEF IN OPPOSITION TO THE PETITION FOR
CERTIORARI**

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CHRESTMAN, BRUNDIDGE, FOUNTAIN, ELLIOTT &
BATEMAN,
Of Counsel.



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*To the Honorable the Supreme Court of the
United States:*

Respondent presents herewith brief in opposition to
the petition for certiorari.

I.

STATEMENT OF THE CASE

The facts stated in the Petition for Certiorari, pages
2 to 4, together with those detailed in the opinion of the

trial court (R. 46-50), 25 F. Supp. 894, are deemed adequate to the determination of the issues presented by the petition for certiorari. The opinion of the Circuit Court of Appeals is reported in 111 F. (2d) 776.

II.

ARGUMENT

POINT ONE

The decision of the Circuit Court of Appeals that Article 8306, Section 8(a), (copied in full, page 12, petition for certiorari), in designating "the wife" as a beneficiary under the Compensation Act, means "legal", and not "putative" wife, is not contrary to any Texas decisions, but entirely in harmony therewith. This is very clearly shown by the decision in Woods vs. Hardware Mutual Casualty Co. (T. C. A.), 141 S. W. (2) 972, 976-978, which is the latest expression of the Texas courts on this subject, and in which case all of the Texas authorities are reviewed, and those relied upon by Petitioner distinguished on the ground that compensation is not a community fund, subject to partnership equities on behalf of a putative wife, but passes directly to the beneficiaries designated by statute.

POINT TWO

The holding that the trial court correctly submitted to the jury the question of whether or not Respondent

had good cause for the delay in filing her claim is not in conflict with any Texas decisions.

At the request of Petitioner, the trial court charged the jury that in determining whether Respondent had good cause for not filing her claim within six months "you must apply the rule of ordinary care, which means the care which a reasonably prudent person would exercise under the same circumstances" (R. 150). This was a correct charge, under Texas law. *Hurd vs. Republic Underwriters*, 105 S. W. (2) 428. In other words, the issue presented is one of fact.

Unlike an employee, Respondent, as a beneficiary under Art. 8306, Sec. 8, was not chargeable with constructive notice that her husband's employer was a subscriber. *Employers Liability Corp. vs. Mills*, 81 S. W. (2) 1028; *Texas Employers Insurance Assn. vs. McGrady*, 296 S. W. 920; *Hurd vs. Republic Underwriters*, 105 S. W. (2) 428. Furthermore the delay in filing was not merely due to "ignorance of the law, or of her rights under the law." She had neither actual nor constructive notice of a compensation law or of subscription by the employer. She had no notice that her husband was employed by any employer carrying compensation, or that he was injured or killed in the course of employment. She testified that the information she received was that he had died (R. 67); and for the purpose of the petition it must be considered that this is true. There were no grounds for direction of a verdict because of an absence of facts constituting "good cause"; and those detailed in

the opinion (R. 46-50), 25 F. Supp. 894, show clearly the necessity of submission to the jury under the Texas decisions.

It is, therefore, respectfully submitted that the case is not a proper one for review by certiorari in this court, and that the petition for writ of certiorari should be denied.

Dated August 28, 1940.

LLOYD E. ELLIOTT,
Attorney for Respondent.

H. A. BATEMAN,
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BATEMAN,
Of Counsel.

